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No. 82-691

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

CLIFFORD PERLMAN AND STUART PERLMAN,
Appellants,

—v.—

ATTORNEY GENERAL OF NEW JERSEY AND
NEW JERSEY CASINO CONTROL COMMISSION,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY BRIEF

The motions to dismiss or affirm filed by the New Jersey Casino Control Commission and the Attorney General of New Jersey seek to defend the result below on the basis of extensive factual allegations, mostly taken out of context from the opinion of the Casino Control Commission, which were not even mentioned much less relied upon in the opinions of the New Jersey courts. Indeed, the only relationship mentioned in those opinions is the one between appellants and Alvin Malnik. Movants thus do not even try to defend the principle that someone may constitutionally be denied a casino license because of his entirely lawful and proper business associations with a third person who has never been convicted of a crime but is "reputed" to have a business connection with a fourth

person who is a "reputed organized crime figure." That, however, is the clear rationale of the New Jersey courts and the principle for which the opinions below will be cited in future cases. Regardless of the Casino Control Commission's opinion,* the opinion of the Supreme Court of New Jersey is square precedent that guilt by association is a valid basis for a state to disqualify a citizen from working in a "sensitive" industry.

It is elementary that this Court will grant plenary review when a lower court decision presents substantial questions likely to have a major impact on the development of the law. *See, e.g.*, R. Jackson, *The Supreme Court in the American System of Government* 14 (1955). It is evident on the face of the opinion of the Superior Court of New Jersey, Appellate Division, which in turn was adopted by the New Jersey Supreme Court, that the decision below presents such questions. Movants' attempt to rationalize the result reached by the courts below on the basis of factual arguments which those courts did not rely upon is therefore irrelevant to the issue whether probable jurisdiction should be noted.

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* Movants' factual arguments are misleading and contrary to the evidence—which no doubt is one reason why they were not relied on by the New Jersey courts. Thus, for example, movants repeatedly suggest that the Perlmans' conduct was found to be somehow reprehensible by the Nevada Gaming Control Board. However, Philip Hannifin, Chairman of the Nevada Board during the period in question, explicitly testified as follows concerning Clifford Perlman's reputation for good character, honesty and integrity, which is supposed to be the standard for granting a key casino employee license in New Jersey (T. 944-15 to 21):

Q. . . . do you have an opinion as to Mr. Perlman's character?

A. Well, my opinion of his character is that it's a very strong character and I feel that he is a man of integrity. I guess the best way to characterize, I believe I can do business with Clifford Perlman on the basis of a handshake, if that answers your question.

Q. You trust him?

A. Yes.

CONCLUSION

For the reasons stated above and in appellants' jurisdictional statement, probable jurisdiction should be noted.

Respectfully submitted,

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